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where the performance required is not of too complicated a nature. Accordingly this hard and fast distinction between affirmative and negative covenants seems anomalous.

CONCURRENT JURISDICTION OF STATES OVER BOUNDARY WATERS.—Where a body of water is the boundary between two nations or states, there may arise many nice questions of jurisdiction because of the necessity to determine the exact place of occurrence of an act committed thereon. Especially difficult are these questions when, as is so often the case in this country, the boundary line is the main channel of a navigable river. The colonies regulated this situation by agreeing that each state should possess concurrent jurisdiction over the boundary river.<sup>1</sup> This solution was adopted at the formation of the Union and incorporated by Congress in the enabling acts of new states whose boundaries presented the problem.<sup>2</sup> By this grant of concurrent jurisdiction each state extends its jurisdiction into the territory of the other state, which at the same time retains its own jurisdiction. Jurisdiction is power to apply law to the acts of men,<sup>3</sup> and by the common law is determined territorially. Logically, a state may extend its jurisdiction over acts committed beyond its territory, or, retaining its territorial sovereignty, grant jurisdiction over acts within its territory.<sup>4</sup> But the combination of these possibilities is not free from difficulty. There are four possible conditions and interpretations of this concurrent jurisdiction: (1) That before jurisdiction is exercised both states must agree; (2) that one state can exercise jurisdiction within the other's territory so long as the other has not acted adversely; (3) that conflicting legislative enactments may exist, but the first state obtaining actual custody over the party or parties in question shall defeat the right of the other state to exercise its powers;<sup>5</sup> (4) that a conflict of legislative, executive, or judicial decrees must be settled, if at all, by agreement between the conflicting jurisdictions after jurisdiction has been exercised.

The Supreme Court, having recognized the possibility of concurrent jurisdiction,<sup>6</sup> had in a recent case to consider its scope. The boundary between Washington and Oregon is the main channel of the Columbia River, and an act of Congress gave the two states concurrent jurisdiction

<sup>1</sup> See *Handly's Lessee v. Anthony*, 5 Wheat. (U. S.) 374. Another form of agreement was the restricted concurrent jurisdiction maintained between Pennsylvania and New Jersey. See *Commonwealth v. Frazer*, 2 Phila. 191; *Attorney-General v. Delaware & Bound Brook R. R. Co.*, 27 N. J. Eq. 1.

<sup>2</sup> This solution was generally adopted. See *State of Missouri v. Metcalf*, 65 Mo. App. 681; *Wiggins Ferry Co. v. Reddig*, 24 Ill. App. 261. New York and New Jersey made an agreement without action by Congress, the constitutionality of which may be questioned. See *People v. Central R. R. Co. of New Jersey*, 42 N. Y. 283.

<sup>3</sup> See *Wedding v. Meyler*, 192 U. S. 573, 584. The distinction between jurisdiction and sovereignty is brought out by the fact that in no case has one state been allowed to tax the property of the other on or over the river. *Dunlieth & Dubuque Bridge Co. v. County of Dubuque*, 55 Ia. 558; *Keokuk & Hamilton Bridge Co. v. People*, 145 Ill. 596; *Hamilton Bridge Co. v. Henderson City*, 173 U. S. 592.

<sup>4</sup> Holland, *Jurisprudence*, 9 ed., chap. XVIII.

<sup>5</sup> This was the agreement between Pennsylvania and New Jersey. *Commonwealth v. Shaw*, 8 Pa. Dist. Rep. 509.

<sup>6</sup> *Wedding v. Meyler*, *supra*. Other courts have enforced this jurisdiction without considering its scope. *State v. Plants*, 25 W. Va 119; *Swearingen & Coriel v. Steamboat Lynx*, 13 Mo. 519.

over acts committed on the river. A Washington citizen licensed by Washington to fish with a purse net was convicted, in an Oregon court, of fishing with such a net on the Washington side of the river, in violation of an Oregon statute prohibiting such fishing in the Columbia River. The court held that the Oregon court did not have jurisdiction over the act in question. *Nielsen v. Oregon*, 212 U. S. 315. Thus the court restricted itself to the first two possible interpretations of concurrent jurisdiction, but left the final determination open. The lower federal courts have adopted the first idea, of a joint action,<sup>7</sup> which, although possible, is a narrow and cumbersome interpretation. It is submitted that the second construction adopted by the majority of the state courts<sup>8</sup> is the better. Joint action is unnecessary: each state retains its sovereign right to control acts within its territory; and it is only when there has been no expression of sovereignty by adverse legislation that the foreign state may also exercise jurisdiction therein.

The scope of the jurisdiction depends also on the kind of act committed. Early views<sup>9</sup> restricting this grant of concurrent jurisdiction over rivers to acts affecting commerce have not been followed.<sup>10</sup> But the jurisdiction has been uniformly held not to apply to acts affecting property, either affixed to the soil under the river<sup>11</sup> or to the river banks.<sup>12</sup> This exemption of property<sup>13</sup> could be extended to cover all property not actually on the river and has been held to include the regulation of fishing rights.<sup>14</sup> This seems erroneous; for the acts of fishing and shooting on a stream are uncertain of location, and the jurisdiction is created to obviate just such a difficulty. As to place, the jurisdiction is limited to acts on the river; although offenses on permanent bridges<sup>15</sup> and on vessels temporarily aground<sup>16</sup> are regarded as within its scope. So, by this interpretation of concurrent jurisdiction, courts have found a basis for determining the perplexing cases that may arise on boundary rivers. A simpler way of dealing with the entire question would be for one state to grant to the other exclusive jurisdiction over the whole river.<sup>17</sup>

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INJUNCTIONS AGAINST THE ENFORCEMENT OF JUDGMENTS OBTAINED BY PERJURY. — Although at first jealously resisted,<sup>1</sup> the power of equity courts to enjoin the enforcement of judgments at law has, since the famous clash

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<sup>7</sup> *In re Matteson*, 69 Fed. 535; *Ex parte Deseiro*, 152 Fed. 1004. See *The Annie M. Smull*, 2 Sawyer (Fed.) 226.

<sup>8</sup> *J. S. Keator Lumber Co. v. St. Croix Boom Co.*, 72 Wis. 62; *McFall v. Commonwealth*, 2 Met. (Ky.) 395; *Wiggins Ferry Co. v. Reddig*, *supra*; *Memphis & Cincinnati Packet Co. v. Pikey*, 142 Ind. 304; *Church v. Chambers*, 3 Dana (Ky.) 274. See *State v. Faudre*, 54 W. Va. 122.

<sup>9</sup> See *Buck v. Ellenbolt*, 84 Ia. 395; *State v. George*, 60 Minn. 503.

<sup>10</sup> *Wedding v. Meyler*, *supra*; *McFall v. Commonwealth*, *supra*; *Dugan v. Indiana*, 125 Ind. 130.

<sup>11</sup> *Garner's Case*, 3 Gratt. (Va.) 654. See *Buck v. Ellenbolt*, *supra*.

<sup>12</sup> *Gilbert v. The Moline Water Power & Mfg. Co.*, 19 Ia. 319; *Mississippi & Missouri R. R. Co. v. Ward*, 2 Black (U. S.) 485; *Attorney-General v. Delaware & Bound Brook R. R. Co.*, 27 N. J. Eq. 1.

<sup>13</sup> This view has been expressly adopted by the Supreme Court. See *Wedding v. Meyler*, *supra*.

<sup>14</sup> *Roberts v. Fullerton*, 117 Wis. 222.

<sup>15</sup> *State v. George*, *supra*; *Comm. v. Shaw*, 8 Pa. Dist. Rep. 509.

<sup>16</sup> *State of Iowa v. Mullen*, 35 Ia. 199.

<sup>17</sup> This is the agreement between New York and New Jersey. See note 2, *ante*, and also *Ferguson v. Ross*, 126 N. Y. 459.

<sup>1</sup> *Heath v. Ryley*, Cro. Jac. 335.